

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA,
BUTTE DIVISION**

LAWRENCE E. HENKE,

Plaintiff,

v.

FIRST AMERICAN TITLE
INSURANCE COMPANY, a Nebraska
corporation,

Defendant.

2:20-cv-24-BMM

ORDER

Plaintiff, Lawrence E. Henke (Henke), filed a Complaint (Doc. 11) against Defendant, First American Title Insurance Company (First American), in the Third Judicial District Court, Granite County, Montana. First American removed the case to federal court. Doc. 1. Henke filed a Second Amended Complaint (Doc. 8), “to specifically plead that damages sought... does not exceed the jurisdictional limits of federal courts.” Doc. 8 at 1.

The Second Amended Complaint was ambiguous. The purpose was clear and explicit, but the prayer for relief included a variety of damages each totaling \$74,850. Doc. 8 at 13. Henke filed a Motion to Remand (Doc. 9), claiming the second Amended Complaint brought the amount in controversy below the jurisdictional minimum set forth in 28 U.S.C. § 1332.

This Court held a Telephonic Status Conference on September 14, 2020, to resolve the ambiguity. Doc. 17. Henke confirmed that he intended the second Amended Complaint (Doc. 4) to claim damages under the jurisdictional minimum of \$75,000 set forth in § 1332. This Court requested that Henke file a third Amended Complaint clearly stating the damages sought. First American conceded during the Telephonic Status Conference (Doc. 17) that a claim for \$74,850 in damages would bring the amount in controversy under the jurisdictional minimum set forth in § 1332.

Henke filed a Third Amended Complaint (Doc. 18) and a renewed Motion to Remand (Doc. 19). In the Ninth Circuit, it is generally preferable to remand case after a complaint is amended to remove the initial basis for federal jurisdiction. *See, e.g., Harrell v. 20th Century Ins. Co.*, 934 F.2d 203 (9th Cir. 1991). Considering the intent and damages sought in the Third Amended Complaint (Doc. 18 at 1, 13) bring the amount in controversy below the jurisdiction minimum set forth in § 1332, remand is proper.

Accordingly, **IT IS ORDERED:**

Plaintiff's renewed Motion to Remand (Doc. 19) is **GRANTED**, with each party to bear its own costs and fees.

DATED this 18th day of September, 2020.

A handwritten signature in blue ink, reading "Brian Morris". The signature is written in a cursive, flowing style.

Brian Morris, Chief District Judge
United States District Court